IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1160 OF 1984

1. Aba Krishna Lokare

2. Rama Ganu Yadav since deceased
by his heirs and representatives

Yashwant Rama Yadav
Yeravale Taluka Karad,
Dist.Satara.

Smt.Parubai Rama Yadav
residing at Yeravale,
Taluka Karad, Dist.Satara.

Sou. Vimal Gorakhnath Sankpal
At and Post Vihe Taluka Patan,
Dist. Satara.

Sunanda Bajirao Patil
at & Post Pachumre, Tal.Walwa
Dist.Satara.

Versus

1. Gopal Kashinath Vategaonkar,

2. Smt.Jayantibai Gopal Vategaonkar

Since deceased by her legal heirs
and legal representatives

Smt.Malini Dattatray Kulkarni,
residing at Palous, Taluka Palous

Dist. Sangli.

Smt.Rohini Madhukar Bokil,
residing at Karvenaka, Gaon Bhag,
Karad Trimurti Colony at Karad,
Dist. Satara.

Mr.Rajendra V. Pai with P.R.Arjunwadkar for petitioners
Mr.Vishwanath Talkute with M.A.Rane for respondent No.2.

WITH

WRIT PETITION NO.1085 OF 1985

1. Gopal Kashinath Wategaonkar
since deceased through legal
heirs Smt.Jayantibai Gopal
Wategaonkar
Since deceased through legal heirs

1A. Malati Dattatray Kulkarni,
R/o. Palus, Taluka Palus,
Dist. Sangli.

1B. Rohini Madhukar Bokil,
R/o.Karvenaka, Gaon Bhag,
Trimurti Colony, Karad,
Tal.Karad, Dist. Satara. ..Petitioners

Versus

1. Sitaram Yesu Yadav,
deceased by his heirs and
legal representatives:-

A. Yashwadabai W/o. Atmaram
Yadav,

B. Laxmibai Pandurang Yadav,

C. Janardan Atmaram Yadav,

D. Sou. Susheela Tanaji Kale,
R/o. at Kalgaon Taluka Patan,
Dist. Satara,

E. Sou. Sunanda Hanmantrao
Sawant, R/o.Chikhali, Taluka
Karad, Dist. Satara.

F. Laxman Atmaram yadav,

G. Bajarang Atmaram Yadav,
minor by next friend Janardan
Atmaram Yadav

Nos. 1A to 1C, 1F and 1g all
R/o.Yeravali, Taluka Karad,
Dist. Satara.

H. Sou. Kamal Anandrao Mohite,
Umarkhanchan, Taluka Karad,
Dist.Satara.

I. Sou. Subhadra Balwant Mohite,
R/o.Umarkhanchan, Taluka Patan,
Dist. Satara.

J. Smt. Vimal Khoshaba Pawar,
at and post Vahagaon, Taluka
Karad, Dist. Satara.

3. Joti Sakhoba Yadav
Since deceased through his
legal heirs

a) Raghunath Joti Yadav,
b) Ramchandra Joti Yadav
c) Krishna Joti Yadav
d) Hirabai Keshav Mane

e) Indubhai Dhanudas Pawar
f) Shalini Vilas shinde.

(a) to (e) r/o.Yeravale Tal.Karad,
Dist. Satara

(d) r/o.Chinchani, Tal.Khanapur,
Dist. Sangli

(e) and (f) R/o.Kille Machindragad,
Taluka Karad, Dist. Satara. .. Respondents.

Mr.Vishwanath Taluka with M.A.Rane for
petitioners
Mr.Rajiv V. Pai with Mr.P.R.Arjunwadkar for
respondent Nos. 1 and 2.

CORAM : A.M.KHANWILKAR, J.

DATE : SEPTEMBER 1, 2004.

P.C.

1. Both these petitions can be disposed of by a common judgement. The land in question is an agricultural land situated at village Yeravale, Taluka Karad, Dist. Satara. One Kashinath Wategaonkar was recorded as owner of the suit land. His name was however, deleted

from the record of rights in respect of certain lands and name of his son Gopal came to be inserted by mutation entry No.2646 on 31st December 1956. The petitioners in writ petition No.1160 of 1984 were tenants in the suit lands since prior to tillers date i.e. 1st April 1957 (hereinafter referred to as tenants for sake of brevity). Suffice it to observe that Gopal and his father Kashinath jointly filed application for issuance of exemption certificate under section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948 (the said Act) on the assertion that they had no land in their possession and were eligible for issuance of such certificate. The appropriate authority favoured the said Gopal and Kashinath with certificate under section 88C of the Act. That decision was carried right upto this Court and which has become final. In other words, Gopal has been held to be a certificated landlord. On the basis of the said certificate the said Gopal by a

notice terminated the tenancy of the tenants in respect of the suit land on the ground of bonafide requirement. Later on, Gopal instituted application under section 31 read with section 29 of the Act for possession of the suit land. Separate applications were filed against each of the tenants. The said applications were disposed of against which the matter was carried further and eventually came to be remanded for fresh enquiry. After the remand, applications came to be finally disposed of by the tenancy Aval Karkoon by his decision dated 29th March 1977. The said authority found that the landlord was entitled to get possession of the suit land in terms of the relief claimed in the application. Against this decision, matter was carried in appeal by the tenants. The appellate authority by its decision dated 12th July 1979, however, allowed the original applications preferred by Gopal only to the extent of half share in the suit land. In other words, the appeals preferred

by the tenants were partly allowed, on the following terms :-

> "The appeal is allowed partially and the lower court's order is modified to the extent that the landlord be restored with half share from S.No.54/5, 203/4, 131/3, and 157/1 and that S.No.202/1 be completely excluded from the scope of restoration.
>
> No order as to costs.
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> The parties be informed accordingly."

The case of the tenants is that, this decision was communicated to them by communication dated 14th August 1979 which was received by Aba Krishna Kokare on 20th August 1979. Soon thereafter, on 22nd August 1979 an application for obtaining certified copy was made. But as

the certified copy was not delivered for long time, fresh application for obtaining certified copy was made to the authority on 4th November 1981. In response to that application the Sub-Divisional Officer, Appellate authority, informed the tenants that as the papers in connection with the matter have been remitted to the Maharashtra Revenue Tribunal (MRT), certified copy of the order cannot be supplied. On receipt of that communication, the tenants then made application for issuance of certified copy to the MRT on 26th November 1980; which was received on 27th November 1980 and on the next day, revision application came to be filed before the MRT i.e. on 27th November 1980 questioning the correctness of the decision of the appellate authority directing the tenants to restore half share from the specified lands. The landlord, on the other hand, had also filed revision application before the tribunal (MRT) questioning the same decision of the appellate authority to the exent it

refused to allow the application for possession of the suit lands in its entirety. Insofar as the revision application preferred by the tenants is concerned, the same has been dismissed by the Tribunal by decision dated Decemebr 13, 1983, mainly on the ground that the same was barred by limitation and the cause shown by the tenants - applicants before the Tribunal was not sufficient cause. Insofar as the revision application preferred by the landlord Gopal Kashinath is concerned, the same came to be dismissed by the Tribunal vide decision dated December 13, 1983 taking the view that the conclusion reached by the appellate authority was correct and in conformity with the legal requirements. Both these decisions of the Tribunal are subject matter of challenge in these writ petitions. The tenants have filed the Writ Petition No.1160 of 1984 whereas the landlord has filed W.P. 1085 of 1985.

2. What is relevant to note for our purpose is that during the pendency of the writ petition, the landlord Gopal Kashinath had expired and his heirs and legal representatives have now been brought on record. In the light of this development, the Counsel for the tenants submits that the heirs and legal representatives of the original landlord will have to establish the claim for possession of the suit land on the ground of bonaide requirement afresh. To buttress this submission reliance is placed on the decision of this Court in the case of Maruti Namdeo Gade Vs. Dattatraya Vishnu Maval, reported in 1977 Mh.L.J. 848 and in the case of Hariba Deshav Barbole Vs. Smt.Motibai Deepchand reported in 1974 Mh.L.J. 823 and lastly a recent decision in the case of Nivrutti Gangaram Pawar Vs. Dinkar Maruti Jadhav reported in 2004(2) Mh.L.J. 674. In substance, the arguments of the tenant is that the law obligates the heirs and legal representatives of the deceased landlord to

establish their bonafide and personal requirement as on the date, when they have been brought on record. It is argued that since final order on the application preferred by the landlord is yet to be passed and before such an order could be passed, the landlord having died and his heirs and legal representatives having been brought on record, they are obliged to establish their bonafide requirements on the date when they have been brought on record of the proceedings. On this submission, the Counsel for the tenants submits that no other enquiry into the matter is relevant because order of possession as already passed or likely to be passed on the application filed by the original landlord cannot be given effect to in view of these changed circumstances, unless the heirs and leal representatives were to establish their bonafide and personal requirements afresh.

3. On the other hand, Counsel for the heirs

and legal representatives of Gopal, original landlord, applicant, submits that the tenants cannot take advantage of the changed circumstances, especially in the fact situation of the present case. It is submitted that the tenants' revision application has been dismissed by the Tribunal on the ground of unexplained delay and this Court by accepting the arguments of the tenants, will in effect, open the Pandora's box which is impermissible. The learned Counsel submits that the view taken in the reported decisions relied upon at the instance of tenants are of no avail, in the fact situation of the present case. He further submits that the writ petition as preferred by the tenants ought to be dismissed as no fault can be found with the view taken by the Tribunal in rejecting the application on the ground of unexplained delay. He further submits that on the other hand, the writ petition preferred on behalf of the landlord which is now pursued by

the heirs and legal representatives of the land lord will have to be allowed so as to grant the application preferred by the landlord in its entirety and not restricted to half share in the specified lands as has been ordered by the authority below.

4. Having considered the rival submissions, I have no hesitation in taking a view that in view of the reported decisions which are pressed into service, the legal position is well established. It is well settled that exemption certificate issued under section 88C of the Act is heritable. If on the basis of such certificate tenancy has been terminated and the application for possession has been instituted by the landlord, that application can be pursued by the heirs and legal representatives of the landlord if, the landlord dies during the pendency of such proceedings. However, in that case, the heirs and legal representatives will

have to establish their bonaide requirement on the date on which they have been brought on record in the proceedings. The fact that the landlord dies during the pendency of the application or at the appellate stage or for that matter at the revisional stage or during the pendency of the writ petition will make no difference. Inasmuch as, the settled legal position is to ascertain the bonafide requirement on the date when the final order is to be passed. In the present case, the final order on the application, as filed by Gopal Kashinath Vategaonkar is yet to be passed. The application so filed by him can be said to have been conclusively decided only upon disposal of the present proceedings, much less, the writ petition filed in this court which is continuation of proceedings of the original application. Viewed in this perspective, merely because the landlord has died during the pendency of writ petition that would not absolve the heirs and legal

representatives of such deceased landlord from complying with the rigours as may be applicable to the heirs and legal representatives of landlord who had died during the pendency of proceedings before the appellate court or the revisional court. Same analogy would apply even when the landlord dies during the pendency of writ petition in this Court. The arguments canvassed by Mr.Arjunwadkar that the heirs and legal representatives of deceased landlord cannot be relegated to fresh enquiry and that course will be unreasonable and unjust cannot be accepted in view of the decisions which are pressed into service on behalf of the tenants.

5. Understood thus, the heirs and legal representatives will have to establish their bonafide requirement, on the date on which they have been brought on record in the present proceedings. Unless that factum is established by the heirs of deceased landlord, the

application for possession in respect of the suit lands cannot succeed. Indeed, the revision application preferred by the tenants before the Tribunal was barred by limitation. However, having regard to the aforesaid legal position it will make no difference. Whereas, in view of the changed circumstances, fresh enquiry will have to be undertaken in which the heirs and legal representatives of the deceased landlord will have to establish their bonafide requirement in respect of the suit land.

6. In this view of the matter, both the petitions will have to be disposed of by relegating the parties before the Tenancy Aval Karkoon who in turn will examine the issue as to whether the heirs and legal representatives of the deceased landlord Gopal have established their bonafide requirements in respect of the suit lands on the date on which they have been brought on record in the proceedings. For that

purpose, the authority will offer opportunity to both sides to adduce necessary evidence and decide the application afresh on its own merits in accordance with the law without being influenced by any observations in the impugned decision or for that matter in the present order. The authority shall decide the proceedings which are remanded pursuant to this order within six months from the receipt of writ of this Court. Both petitions are disposed of on the above terms with no order as to costs.

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